1   ORRICK, HERRINGTON & SUTCLIFFE LLP
    KAREN G. JOHNSON-MCKEWAN (SBN 121570)
2   kjohnson-mckewan@orrick.com
    ANNETTE L. HURST (SBN 148738)
3   ahurst@orrick.com
    GABRIEL M. RAMSEY (SBN 209218)
4   gramsey@orrick.com
    405 Howard Street, San Francisco, CA 94105
5   Tel: 1.415.773.5700 / Fax: 1.415.773.5759
    PETER A. BICKS (*pro hac vice*)
6   pbicks@orrick.com
    LISA T. SIMPSON (*pro hac vice*)
7   lsimpson@orrick.com
    51 West 52nd Street, New York, NY 10019
8   Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9   BOIES, SCHILLER & FLEXNER LLP
    DAVID BOIES (*pro hac vice*)
10 dboies@bsfllp.com
    333 Main Street, Armonk, NY 10504
11 Tel: 1.914.749.8200 / Fax: 1.914.749.8300
    STEVEN C. HOLTZMAN (SBN 144177)
12 sholtzman@bsfllp.com
    1999 Harrison St., Ste. 900, Oakland, CA 94612
13 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION
    DORIAN DALEY (SBN 129049)
15 dorian.daley@oracle.com
    DEBORAH K. MILLER (SBN 95527)
16 deborah.miller@oracle.com
    MATTHEW M. SARBORARIA (SBN 211600)
17 matthew.sarboraria@oracle.com
    RUCHIKA AGRAWAL (SBN 246058)
18 ruchika.agrawal@oracle.com
    500 Oracle Parkway,
19 Redwood City, CA 94065
    Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*
    ORACLE AMERICA, INC.

21   UNITED STATES DISTRICT COURT

22   NORTHERN DISTRICT OF CALIFORNIA

23   SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.,   Case No. CV 10-03561 WHA

25   Plaintiff,   **ORACLE'S RESPONSE TO ECF NO.
                                           1631: COURT'S REQUEST RE**
26   v.   **EXPERTS**

27 GOOGLE INC.,

28   Defendant.

1   Plaintiff Oracle America, Inc. ("Oracle") hereby responds to the Court's request (ECF No.

2   1631) with a list of its experts who are not the subject of motions *in limine* with a brief summary

3   of the opinions they intend to offer.

4   **Gwyn Firth Murray**. Ms. Murray is an open source licensing and industry expert

5   retained by Oracle to respond to the opinions of Mr. Hall. Her testimony is necessary only if

6   Google is permitted to present argument that it could have used the OpenJDK version of Java

7   SE—including Dr. Leonard's opinion identifying OpenJDK as a non-infringing alternative. If

8   called to testify, Ms. Murray will provide the jury with background on open source licensing,

9   including its purpose and development, as well as industry practices regarding open source

10   compliance during the relevant time period. She may testify about the different licenses that

11   Google has put at issue in this case, including discussing industry perception of the meaning,

12   impact, and uncertainties of these licenses. Ms. Murray may also provide opinions demonstrating

13   that Google and its OEMs face substantial risk of violating the OpenJDK license terms with

14   Google's December 24, 2015 announcement that it would release a future version of Android

15   using OpenJDK. *If Oracle's Motions in Limine #1 and #4 are granted to preclude evidence or*

16   *argument that Google could have used OpenJDK (including as an NIA), Ms. Murray's testimony*

17   *will not be necessary.*

18   **Douglas Schmidt, PhD.** Dr. Schmidt is a professor of computer science who will provide

19   technical expert opinions and analysis relevant to the Java and Android platforms. Dr. Schmidt's

20   opinions relate to the fair use factors as well as disgorgement of profits. Dr. Schmidt will opine

21   on the history and structure of the Java platform, including the benefits of the "write once, run

22   anywhere" principle; he will explain how the Java platform supports software compatibility and

23   portability. He will explain how Android is not compatible with Java. Dr. Schmidt will describe

24   the important difference between the Java programming language and the Java APIs, and explain

25   that—with the exception of about 154 lines of declaring code—the APIs are not technically

26   necessary for use of the language. Dr. Schmidt will explain the nature of design of APIs, and the

27   creativity of the Java APIs. He will discuss the purpose, quantity, and impact of Google's

28   copying of the declaring code and SSO of the 37 Java API Packages. For example, Dr. Schmidt

1   will offer his opinion that Google did not alter the declaring code or SSO of the 37 Java API

2   Packages in a manner that changed their purpose or character. Dr. Schmidt will further provide

3   testimony relating to the amount and substantiality of the copied declaring code and SSO. Dr.

4   Schmidt will describe how the declaring code of the 37 Java API Packages is critical to Android,

5   as evidenced by the inability to compile Android without that code. He will provide opinions

6   relating to the relationship between Java ME and Java SE. Dr. Schmidt may also discuss the

7   technical feasibility of Google's proposed alternatives to the 37 Java API Packages. In addition,

8   Dr. Schmidt may testify about technical analysis he performed as a result of Google's

9   announcement to use OpenJDK in a future version of Android, demonstrating that OEMs modify

10 the core libraries and other parts of the Android source code. Ms. Murray relies on this analysis

11 in reaching her conclusions that Google and its Android licensees face substantial risk of non-

12 compliance with OpenJDK. Dr. Schmidt will also provide other opinions as needed in rebuttal to

13 Google's technical experts. *If Oracle's Motions in Limine #1 and #4 are granted, Dr. Schmidt*

14 *will not need to testify regarding his OpenJDK-related analysis.*

15   **Olivier Toubia, PhD.** Dr. Toubia is an expert in marketing research and behavioral

16 economics, retained by Oracle to assist it in analyzing the survey Dr. Simonson conducted for

17 Google. Dr. Toubia's testimony is only necessary if Google is permitted to discuss or rely in any

18 way on Dr. Simonson's survey. At trial, Dr. Toubia will provide opinions explaining that Dr.

19 Simonson's survey (1) failed to reliably measure developers' motivations for developing

20 applications in 2007-2009 when the Android apps market was in its infancy; (2) failed to create

21 the necessary historical context that affected app developers' decisions when Android was a new

22 platform; (3) failed to consider and is inconsistent with contemporaneous documents and

23 testimony illustrating that historical context; (4) failed to survey the relevant respondents; (5)

24 failed to implement any means to focus survey respondents on the appropriate time frame; (6) is

25 unreliable because it asks respondents to recall events occurring 7-9 years ago; (7) is unreliable

26 because it failed to include a control; (8) is unreliable because it included the results from a pre-

27 test of his survey; and (9) suffers from other flaws, including social desirability bias and failure to

28 exclude respondents who gave problematic responses to his benchmark question. *If Oracle's*

ORACLE'S RESPONSE TO ECF NO. 1631 RE:
COURT'S REQUEST RE EXPERTS

1   *Motion in Limine #5 is granted, Dr. Toubia's testimony will not be necessary.*

2   **Robert Zeidman.** Mr. Zeidman is an expert on source code comparison whose testimony

3   relates to factor three, the "amount and substantiality of the portion taken." Mr. Zeidman analyzed

4   the source code and published APIs for Java SE 5 and various versions of Android.[1] Using a

5   combination of standard software analysis tools and custom scripts, Mr. Zeidman identified and

6   quantified the number of declaring code statements and the associated number of lines of code

7   from the 37 Java API Packages in Java SE 5 that Google copied. The results of Mr. Zeidman's

8   analysis are tabulated in a series of charts which set forth the copied declarations and the

9   associated number of lines of code in the corresponding code file. Mr. Zeidman will present

10   testimony introducing and explaining these charts. *If Google will stipulate to the admissibility of*

11   *Mr. Zeidman's charts, Mr. Zeidman's testimony will not be necessary.*

12

13

14

15   Dated: April 12, 2016   Respectfully submitted,

16   Orrick, Herrington & Sutcliffe LLP

17   By: */s/ Annette L. Hurst*
                                                              Annette L. Hurst

18   Counsel for ORACLE AMERICA, INC.

19

20

21

22

23

24

25

26

27   ---
[1] Mr. Zeidman will also be prepared to discuss the extent of Android's use of the 37 Java API
28   Packages in Java SE 6 and 7, if such evidence is admissible for purposes other than infringement,
     as stated in this Court's Order of February 5, 2016 (ECF No. 1479).

ORACLE'S RESPONSE TO ECF NO. 1631 RE:
                                                        COURT'S REQUEST RE EXPERTS